

Message Text

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DRAFTED BY EUR/EE/MHA VAN HEUVEN:S/FW-COA - CMDR. PWELLING

APPROVED BY EUR/EE - JABAKER

JUSTICE - JTAFE

COMMERCE/BEWWT - LLEWINS

COAST GUARD - LT. CMDR. ANDERSON

SCA/VO - HNEWMASTER

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R 092243Z APR 74

FM SECSTATE WASHDC

TO AMEMBASSY BUCHAREST

INFO AMEMBASSY SOFIA

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E.O. 11652: N/A

TAGS: EFIS, RO

SUBJECT: DETENTION OF TRAWLER INAU

REF: BUCHAREST 1399 (NOTAL)

FOR SECRETARY DENT'S PARTY

1. FOLLOWING IS UPDATE OF INAU CASE, WHICH MAY BE USED WITH STATE 70170 TO SUPPLEMENT POSITION PAPER NO. 38 IN SECRETARY DENT'S BRIEFING BOOK.

2. THE F/V INAU WAS SEIZED BY THE US COAST GUARD ON MARCH 26 FOR VIOLATION OF US LAW (16 USC 1081), I.E. FISHING WITHIN THE US CONTIGUOUS FISHERIES ZONE. MASTER OF INAU WAS ARRAIGNED ON APRIL 5 AT PRELIMINARY HEARING IN US DISTRICT COURT BALTIMORE AND HAS ENTERED PLEA OF NOT GUILTY. US DISTRICT ATTORNEY (USDA) HAS FILED CIVIL CLAIM AGAINST THE VESSEL. ROMANIANS HAVE FOLLOWED OUR

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ADVICE AND RETAINED COUNSEL FOR THE MASTER AND VESSEL.

ROMANIAN EMBASSY OFFICER HAS PARTICIPATED FULLY IN COURT PROCEEDINGS. DEFENSE COUNSEL HAS TAKEN DEPOSITIONS OF USG OFFICERS INVOLVED AND HAS UNTIL APRIL 15 TO FILE MOTIONS. FOLLOWING TIME INTERVAL FOR THE USDA TO ANSWER DEFENSE MOTIONS AND FOR A HEARING ON THE MOTIONS, THE CASE WOULD GO TO TRIAL IN MID-MAY AT THE EARLIEST, UNLESS THE ROMANIANS DECIDED ON OUT-OF-COURT SETTLEMENT.

THE INAU LIKELY TO BE MOVED TO COMMERCIAL MOORAGE IN BALTIMORE HARBOR FROM THE COAST GUARD BASE. STATE PLANS TAKE UP WITH INS WAIVER OF VISA REQUIREMENTS TO PERMIT CREW TO GO ASHORE.

3. IN ACCORDANCE NORMAL PROCEDURE IN SEIZURE CASES, IT WAS AGREED TO BY EXECUTIVE AGENCIES OF THE FEDERAL GOVERNMENT THAT A FIGURE OF \$125,000 WOULD BE APPROPRIATE TOTAL FOR MASTER'S FINE AND CIVIL PENALTY AGAINST VESSEL. THE DEPARTMENTS OF COMMERCE AND STATE CONCURRED IN THIS FIGURE AS A REASONABLE AMOUNT IF THE FACTS OF THE CASE WERE SUFFICIENT TO ESTABLISH VIOLATION OF US LAW AND IF DEFENDANTS AGREED TO A PRE-TRIAL SETTLEMENT. IT SHOULD BE NOTED THAT IF THE CASE GOES TO TRIAL THE SIZE OF ANY PENALTIES WILL BE ASSESSED BY THE COURT AND WILL NOT NECESSARILY BEAR ANY RELATION TO THE \$125,000 DOLLAR FIGURE.

4. THE QUESTION OF PURSUING DEFENSES TO THE CHARGE OF ILLEGAL FISHING OR PAYING THE OUT OF COURT FINE AND PENALTY OF \$125,000 IS A MATTER TO BE RESOLVED BY THE ROMANIANS AND THEIR AMERICAN COUNSEL. IT SHOULD BE NOTED, HOWEVER, THAT IN THE VAST MAJORITY OF SEIZURE INCIDENTS, THE CASES HAVE BEEN SETTLED OUT OF COURT.

5. EVIDENTLY OPTIMISTIC ACCOUNTS BY BOGDAN AND ROMANIAN CONSUL REFTEL DO NOT SQUARE WITH OUR INFORMATION ABOUT FACT-FINDING PROCESSES NOW UNDER WAY. WE HAVE BEEN GIVEN DISTINCT IMPRESSION THAT IF CASE WERE TO GO TO TRIAL, EVIDENCE WOULD BE HEAVILY AGAINST INAU, SPECIFICALLY NOT SUPPORTING ANY CLAIM OF DISTRESS OR MALFUNCTION OF GEAR. WE ARE TOLD BY USDA THAT HE LIMITED OFFICIAL USE

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CONSIDERS HE HAS STRONG CASE AND IS NOT AWARE OF ANY EVIDENCE TO SUPPORT EFFECTIVE DEFENSE.

6. YOU SHOULD CONTINUE TO MAINTAIN LINE THAT CASE IS TO BE RESOLVED THROUGH JUDICIAL PROCESSES. ROMANIANS PROBABLY AWARE THAT PROTRACTED LITIGATION WILL INCREASE RISK OF PUBLICITY AND MAY COME TO REALIZE ECONOMIC

ADVANTAGES TO SETTLEMENT UNDER WHICH VESSEL COULD BE
ALLOWED TO DEPART AND RESUME FISHING OPERATIONS.

7. WE DO NOT ATTACH POLITICAL SIGNIFICANCE TO THIS CASE.
ALLEGATIONS OF FISHING VIOLATIONS ARE BY NO MEANS UN-
COMMON. THEIR DISPOSITION BY JUDICIAL MEANS HAS NOT
AFFECTED OUR POLITICAL RELATIONS WITH THE FLAG STATES

OF THE AFFECTED VESSELS. KISSINGER

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